IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12820 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SECRETARY

Appearance:

MR NAGESH C SOOD for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/01/2002

ORAL JUDGEMENT

The present petition is filed by the Gujarat State Road Transport Corporation (hereinafter referred to as "corporation") challenging the judgement and award of the Industrial Tribunal, Ahmedabad (hereinafter referred

to as "the Tribunal") in Reference (IT) No.96 of 1995 dated 3.2.2000 whereby the learned Member of the Tribunal was pleased to quash and set aside the order passed by the petitioner corporation dated 3.3.1994 holding it to be illegal and ordered to give all consequential benefits to the respondent workman alongwith cost of Rs.1000/-.

2. The case of the petitioner corporation is that the respondent workman while on route from Sasam to Palanpur on 26.11.1992 was found to have indulged in an irregularity to the effect that 12 passengers of one single group were not issued ticket and no fare was collected. The case of the respondent workman is that the bus was overloaded and there were 85 passengers in the bus and at the time when the bus was checked some dispute over the fare payable was going on between the members of the group and the conductor and therefore, the tickets were not issued.

3. Learned advocate Mr.Nagesh Sood appearing for the petitioner corporation submitted that the charge is proved and once the charge is proved the learned Member of the Tribunal ought not to have interfered with the order of punishment in view of the following judgements of the Honourable the Apex Court, viz. (i) Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others v. Secretary, Sahakari Noukarara Sangha and others, reported in (2000) 7 SCC 517, wherein the Honourable the Apex Court has held that, 'once an act of misappropriation is proved, may be for a small or a large amount, there is no question of uncalled for sympathy and reinstating the employee in service'. Learned advocate relied upon para 7 of the judgement which reads as under:

> "7. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the management."

He then relied upon a judgement and order of the Honourable the Apex Court in Civil Appeal No.5630 of 2000 between Gujarat State Road Transport Corporation v. Prakash Ganesh Tankaria, wherein also it is held that, 'the suit decreed on the ground that the passengers whose

statements recorded have not been examined is incorrect'. The Apex Court was also pleased to hold that the lower appellate court and the High Court had erred in affirming the same. It is observed as under:

> ".. .. In the matter like the present where conductors are being proceeded against on the allegation of non-charging of fares and non-issuance of tickets, it is well nigh impossible at the later time to secure the presence of those passengers. It is for this reason that the inspect report and the testimony of the inspector was relied upon. The fact that it was not incumbent in the departmental proceedings like this to ask the passengers to depose has been laid down by this Court in State of Haryana & anr. v. Rattan Singh, AIR 1977 SC 1512. Further more, this Court has in Karnataka State Road Transport Corporation v. B.S. Hullikatti (2001) 2 SCC 574, held that in cases like the present where a bus conductor while charging from the passengers does not deposit with the appellant the fare so collected, should be regarded as being guilty of gross negligence. The primary duty of the conductor is to realise the fare and not doing so and allowing the passengers either to trave free of charge or by realising less charges and not depositing the fare with the Transport Corporation, cannot be taken lightly."

4. Learned advocate Mr.Rathod submitted that a lenient view may be taken in the matter and penalty of stoppage of increments without future effect may be imposed. The request of the learned advocate Mr.Rathod cannot be acceded to in view of the fact that the default card of the respondent workman shows as many as 15 defaults, first having been committed in 1976 and the last one in 1993. Out of them, ten defaults pertain to financial irregularities. It is not a case wherein the respondent workman was not given an opportunity to improve. In 1976 itself he was imposed penalty of, 'stoppage of one increment with future effect'. Thereafter on number of occasions annual increments were stopped without future effect for a duration of three months, six months, four months, two months, etc. This shows that the respondent workman has no tendency of improving. The request of the learned advocate for the respondent is rejected.

5. The petition is allowed. Rule is made absolute

with no order as to costs.

(Ravi R. Tripathi, J.)

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